

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

In Re:)	IN CHAPTER 7 PROCEEDINGS
)	
CHEMETCO, INC.)	BK 01-34066
)	
Debtor.)	

**REPLY TO OBJECTION OF OLIN CORPORATION AND INTERCO
TO TRUSTEE’S APPLICATION TO APPROVE SETTLEMENT**

COMES NOW the Trustee, Donald M. Samson (“Trustee”), by counsel, and submits this Reply to the Objections filed by Olin Corporation (“Olin”) and Interco Trading Company (“Interco”):

INTRODUCTION

Two out of the many hundreds of parties to this bankruptcy proceeding have filed objections to a proposed settlement by and between Paradigm Minerals and Environmental Services, LLC (“PMES”), the Illinois Environmental Protection Agency (“IEPA”), the United States Environmental Protection Agency (“USEPA”), Commerce Bank (“Commerce”) and the Trustee (collectively, the “Settling Parties”). As shown below and in responses served by other Settling Parties, the settlement is clearly in the best interests of all parties and should be approved. In addition, Olin’s and Interco’s objections are unsupported by fact or law and should therefore be denied.

INTERCO OBJECTION

In paragraphs 2, 3 and 4 of its Objection, Interco claims that the Settlement fails to consider the interests of Potentially Responsible Parties (“PRP”) for environmental cleanup. This contention is plainly wrong. The response of the USEPA and IEPA fully addresses this subject and those comments will not be repeated here. In addition, the PRP’s are advantaged in

at least two ways. First, the Settlement Agreement is necessary for PMES to be able to process and sell materials from the Chemetco site. It is estimated that there are approximately 900,000 metric tons of material at the smelter site. Every ton sold by PMES is one less ton that the PRPs could potentially be responsible to remediate. The connection between success with material sales to the reduction of potential liability for PRPs could not be more direct or more clear. Second, the original Asset Purchase and Processing Agreement (“APPA”) provided for creation of an environmental remediation fund paid for by 5% of the Processing Revenue, capped at \$10,000,000.00 and available for use to address new environmental issues that might be created by processing material. (APPA, pars. 4.4(a); 5.2). The Settlement Agreement improves that protection by removing the \$10,000,000.00 fund cap and permitting the funds to be used to address even preexisting environmental issues that otherwise might be the responsibility of the PRPs.

In paragraph 5 of its Objection, Interco notes that the Parties are granted releases. The language of paragraph 11 of the Settlement Agreement makes clear that the releases are limited to the subject matter of the Objections and the Appeal which are defined terms in the Settlement Agreement and describe specific proceedings. It is usual and customary for parties settling a dispute to include releases from the claims and this provides no basis to reject the settlement.

In paragraph 6 of its Objection, Interco purports to object to language making the settlement enforceable on successors to the Parties. This clause is usual and customary for any settlement agreement and necessary to ensure finality for the litigated issues. The resolution to the litigation would be illusory if any successor would not be bound.

In paragraph 7 of its Objection, Interco claims that paragraph 15 of the Settlement Agreement divests the Bankruptcy Court of any jurisdiction over Chemetco. In fact, the opposite

is true. Paragraph 15 of the Settlement Agreement makes clear that the Bankruptcy Court has “exclusive jurisdiction” to hear any dispute with respect to the Settlement Agreement.

The remainder of the Objection fails to provide any basis to avoid approval of the Settlement Agreement.

OLIN OBJECTION

Olin filed its Objection to the Settlement Agreement arguing in paragraphs 12 – 19 that the distribution percentages used provide PMES with 1.5% more revenue from gross sales than previously established and that the Estate may receive .5% less than it otherwise would have. The Trustee understands that Olin objects both as a PRP and a potential creditor of Chemetco. To the extent that Olin objects as a PRP, the analysis with respect to the Interco Objection applies equally here and shows that the Settlement Agreement unquestionably benefits PRPs, including Olin.

With respect to the minimal changes in compensation identified by Olin (and without admitting the accuracy of the same), the Trustee notes that the Settlement Agreement makes a number of clarifications believed to be beneficial to all interested entities. Foremost among these, the Settlement Agreement creates a path forward for remediation of the site. This is accomplished by: (a) selling material as it exists on the site when possible and as a bridge to processing and refining the material; (b) creating the means necessary to permit construction of the processing facility (at PMES’ cost) which should greatly enhance the value received by all parties for materials sold; and (c) addressing the changed circumstances caused by this site being named to the “Superfund” list, which greatly increased the regulatory complexity and costs associated with material handling and processing.

The payment protocols have changed over time due in no small part to increased regulatory complexity. Initially, PMES was entitled to be paid a percentage of the "Processing Revenue" which was defined as gross revenue net of "Operating Expenses." "Operating Expenses" were very broadly defined and included most expenses necessary to operate the site and processing facilities. (Doc. 1623-1, p. 25). In part to address the administrative complexity in listing each specific item that may be an "Operating Expense," this term was modified to be 30% of gross revenue. (Doc. 1426 and 1528). When it came time in 2011 to make distributions from sales of materials from the site, a dispute arose with IEPA and USEPA regarding proper classification of certain expense or sale items. Objections and appeals were filed and the Parties undertook extensive negotiations to clarify how revenues were described and disbursed.

At the very same time, PMES, the Estate and IEPA and USEPA have been involved in a tremendous amount of work to reach agreement regarding a consent decree to permit processing and sale of material at the site. These activities have caused front loading of significant expense and investment without corresponding revenue from sales.

The settlement formulas address all of these issues by clarifying the costs that will be borne by PMES as "Buyer" and providing for it to reimburse approximately \$537,000 in disputed charges from future sales. The minimal changes identified to Section 4.4 of the APPA are necessary to fund start-up costs including increased regulatory burden from being designated as a Superfund site and construction of the processing facility.

The Settlement Agreement makes clear the benefits in fulfilling its terms and the significant detriment to PRPs and creditors should the agreement be rejected. Document 1694-1, p. 10 shows that there exists a contract for the sale of the entire unprocessed slag pile. This establishes a low end estimate of possible sales revenue to be approximately \$20,000,000.00.

After direct costs of preparing the material for sales and other expenses, smaller amounts would be left for remediation (although, as noted, each ton of material sold reduces the amount that may need to be addressed by PRPs), for creditors and to reduce expense to PRPs. On the other hand, if PMES makes the investment to build the processing plant, then the higher grade metals recovered could provide revenues many times greater than that projected from sales of the unprocessed slag pile. The exact amount of the increased value cannot be predicted with certainty because it will depend in large part on future prices for commodity metals. In making this investment, PMES has assumed significant financial risk and must be able to cover its start-up and operating expenses. Doing so provides the best opportunity for remediation and financial protection for creditors and PRPs.

In paragraph 20 of its Objection, Olin notes that the APPA will be amended to give PMES the right but not the obligation to accept title to the Smelter Site and the NPR property. The obligation remains to pay the purchase price for this property but the obligation to take title was omitted because the property has been designated as a Superfund site, which is a material change in circumstances.

In paragraph 21 of its Objection, Olin addresses the \$400,000 deposit for the purchase of the Smelter Site and the NPR property. As noted previously, the property purchase price will still be paid from revenue generated from the sale of material on the site. Further, the complexity and cost associated with establishing a processing plant and system have dramatically increased. Payment of the deposit amount will be made from revenues generated from material sales so that current financial resources can be devoted to the efforts to create a processing plant and generate substantially increased revenues.

CONCLUSION

The objecting parties raise concerns arising from their status as PRPs and/or creditors. The Trustee believes that these interests have been fully represented in the original objections, the appeals, negotiations and the settlement agreement by, among others, the participation of the USEPA and IEPA in the process. Both the USEPA and IEPA are unquestionably interested in the environmental status and remediation at the site. Both the USEPA and the IEPA are also substantial creditors with an interest in maximizing recovery to the estate.

For the reasons stated herein, the Trustee believes that the Settlement Agreement represents a balanced approach to resolving disagreement over the effect and meaning of the successive iterations of the APPA in a way that advances the legitimate interests of the various constituencies. The Trustee respectfully requests that the Court approve the Settlement Agreement and deny the objections.

DONALD M. SAMSON, TRUSTEE

/s/ William J. Niehoff

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served electronically upon all parties scheduled upon the Court's ECF Notice List this 20th day of September, 2012.

/s/ William J. Niehoff